

Senate File 316

SENATE FILE _____
BY COMMITTEE ON EDUCATION

(SUCCESSOR TO SF 169)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the conduct and licensure of school employees
2 by creating a criminal offense of sexual exploitation by a
3 school employee, providing a penalty, authorizing the board of
4 educational examiners to perform record checks at the
5 applicant's expense, and requiring school districts and
6 schools to report practitioner misconduct under certain
7 circumstances.
8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
9 TLSB 1284SV 80
10 kh/pj/5

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1 1 Section 1. Section 272.2, subsection 14, paragraph b,
1 2 subparagraph (1), subparagraph subdivision (b), Code 2003, is
1 3 amended by adding the following new subparagraph subdivision
1 4 part:
1 5 NEW SUBPARAGRAPH SUBDIVISION PART. (viii) Sexual
1 6 exploitation by a school employee.
1 7 Sec. 2. NEW SECTION. 272.15 SINGLE CONTACT REPOSITORY ==
1 8 RECORD CHECKS.
1 9 1. The board may access the single contact repository
1 10 established by the department of inspections and appeals
1 11 pursuant to section 135C.33 as necessary for the board to
1 12 perform record checks of persons seeking renewal of a license
1 13 or certificate issued pursuant to this chapter.
1 14 2. The board shall charge an applicant seeking renewal of
1 15 a license, authorization, or certificate a fee to defray the
1 16 costs of performing record checks in accordance with
1 17 subsection 1. This fee is in addition to any other license or
1 18 other fee charged by the board. The executive director shall
1 19 deposit the fees with the treasurer of state and the fees
1 20 shall be credited to the general fund of the state. The
1 21 executive director shall keep an accurate and detailed account
1 22 of fees received and paid to the treasurer of state.
1 23 3. The board of directors of a school district or area
1 24 education agency and the authorities in charge of a nonpublic
1 25 school shall report to the board the nonrenewal or
1 26 termination, for reasons of alleged or actual misconduct, of a
1 27 person's contract executed under sections 279.12, 279.13,
1 28 279.15 through 279.21, 279.23, and 279.24, and the resignation
1 29 of a person who holds a license, certificate, or authorization
1 30 issued by the board as a result of or following an incident or
1 31 allegation of misconduct. Information reported to the board
1 32 in accordance with this subsection is privileged and
1 33 confidential, and, except as provided in section 272.13, is
1 34 not subject to discovery, subpoena, or other means of legal
1 35 compulsion for its release to a person other than the
2 1 respondent and the board and its employees and agents involved
2 2 in licensee discipline, and is not admissible in evidence in a
2 3 judicial or administrative proceeding other than the
2 4 proceeding involving licensee discipline. The board shall
2 5 review the information reported to determine whether a
2 6 complaint should be initiated. For purposes of this
2 7 subsection, unless the context otherwise requires,
2 8 "misconduct" means an action disqualifying an applicant for a
2 9 license or causing the license of a person to be revoked or
2 10 suspended in accordance with the rules adopted by the board to
2 11 implement section 272.2, subsection 14.
2 12 Sec. 3. Section 614.1, subsection 12, Code 2003, is
2 13 amended to read as follows:
2 14 12. SEXUAL ABUSE OR SEXUAL EXPLOITATION BY A COUNSELOR, OR
2 15 THERAPIST, OR SCHOOL EMPLOYEE. An action for damages for
2 16 injury suffered as a result of sexual abuse, as defined in
2 17 section 709.1, by a counselor, ~~or~~ therapist, or school

2 18 employee, as defined in section 709.15, or as a result of
2 19 sexual exploitation by a counselor, ~~or~~ therapist, or school
2 20 employee shall be brought within five years of the date the
2 21 victim was last treated by the counselor or therapist, or
2 22 within five years of the date the victim was last enrolled in
2 23 the school.

2 24 Sec. 4. Section 692A.1, subsection 10, Code 2003, is
2 25 amended to read as follows:

2 26 10. "Sexual exploitation" means sexual exploitation by a
2 27 counselor, ~~or~~ therapist, or school employee under section
2 28 709.15.

2 29 Sec. 5. Section 702.11, subsection 2, paragraph d, Code
2 30 2003, is amended to read as follows:

2 31 d. Sexual exploitation by a counselor, ~~or~~ therapist, or
2 32 school employee in violation of section 709.15.

2 33 Sec. 6. Section 709.15, Code 2003, is amended to read as
2 34 follows:

2 35 709.15 SEXUAL EXPLOITATION BY A COUNSELOR, ~~OR~~ THERAPIST,
3 1 OR SCHOOL EMPLOYEE.

3 2 1. As used in this section:

3 3 a. "Counselor or therapist" means a physician,
3 4 psychologist, nurse, professional counselor, social worker,
3 5 marriage or family therapist, alcohol or drug counselor,
3 6 member of the clergy, or any other person, whether or not
3 7 licensed or registered by the state, who provides or purports
3 8 to provide mental health services.

3 9 b. "Emotionally dependent" means that the nature of the
3 10 patient's or client's or former patient's or client's
3 11 emotional condition or the nature of the treatment provided by
3 12 the counselor or therapist is such that the counselor or
3 13 therapist knows or has reason to know that the patient or
3 14 client or former patient or client is significantly impaired
3 15 in the ability to withhold consent to sexual conduct, as
3 16 described in ~~paragraph "f" subsection 2~~, by the counselor or
3 17 therapist.

3 18 For the purposes of ~~paragraph "f" subsection 2~~, a former
3 19 patient or client is presumed to be emotionally dependent for
3 20 one year following the termination of the provision of mental
3 21 health services.

3 22 c. "Former patient or client" means a person who received
3 23 mental health services from the counselor or therapist.

3 24 d. "Mental health service" means the treatment,
3 25 assessment, or counseling of another person for a cognitive,
3 26 behavioral, emotional, mental, or social dysfunction,
3 27 including an intrapersonal or interpersonal dysfunction.

3 28 e. "Patient or client" means a person who receives mental
3 29 health services from the counselor or therapist.

3 30 f. "School employee" means a practitioner as defined in
3 31 section 272.1.

3 32 g. "Student" means a person who is currently enrolled at
3 33 or attending a public or nonpublic elementary or secondary
3 34 school, or who was a student enrolled at a public or nonpublic
3 35 elementary or secondary school within thirty days of any
4 1 violation of subsection 3.

4 2 ~~f. 2. "Sexual exploitation by a counselor or therapist"~~
4 3 occurs when any of the following are found:

4 4 (1) ~~a.~~ A pattern or practice or scheme of conduct to
4 5 engage in any of the conduct described in ~~subparagraph (2) or~~
4 6 ~~(3) paragraph "b" or "c".~~

4 7 (2) ~~b.~~ Any sexual conduct, with an emotionally dependent
4 8 patient or client or emotionally dependent former patient or
4 9 client for the purpose of arousing or satisfying the sexual
4 10 desires of the counselor or therapist or the emotionally
4 11 dependent patient or client or emotionally dependent former
4 12 patient or client, which includes but is not limited to the
4 13 following: kissing; touching of the clothed or unclothed
4 14 inner thigh, breast, groin, buttock, anus, pubes, or genitals;
4 15 or a sex act as defined in section 702.17.

4 16 (3) ~~c.~~ Any sexual conduct with a patient or client or
4 17 former patient or client within one year of the termination of
4 18 the provision of mental health services by the counselor or
4 19 therapist for the purpose of arousing or satisfying the sexual
4 20 desires of the counselor or therapist or the patient or client
4 21 or former patient or client which includes but is not limited
4 22 to the following: kissing; touching of the clothed or
4 23 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
4 24 genitals; or a sex act as defined in section 702.17.

4 25 "Sexual exploitation by a counselor or therapist" does not
4 26 include touching which is part of a necessary examination or
4 27 treatment provided a patient or client by a counselor or
4 28 therapist acting within the scope of the practice or

4 29 employment in which the counselor or therapist is engaged.

4 30 3. Sexual exploitation by a school employee occurs when

4 31 any of the following are found:

4 32 a. A pattern or practice or scheme of conduct to engage in
4 33 any of the conduct described in paragraph "b".

4 34 b. Any sexual conduct with a student for the purpose of
4 35 arousing or satisfying the sexual desires of the school

5 1 employee or the student. Sexual conduct includes but is not
5 2 limited to the following: kissing; touching of the clothed or
5 3 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
5 4 genitals; or a sex act as defined in section 702.17.

5 5 Sexual exploitation by a school employee does not include
5 6 touching that is necessary in the performance of the school
5 7 employee's duties while acting within the scope of employment.

5 8 ~~2- 4. a. A counselor or therapist who commits sexual~~
5 9 ~~exploitation in violation of subsection \dagger 2, paragraph "f"~~
5 10 ~~"a", subparagraph (1), commits a class "D" felony.~~

5 11 ~~3- b. A counselor or therapist who commits sexual~~
5 12 ~~exploitation in violation of subsection \dagger 2, paragraph "f"~~
5 13 ~~"b", subparagraph (2), commits an aggravated misdemeanor.~~

5 14 ~~4- c. A counselor or therapist who commits sexual~~
5 15 ~~exploitation in violation of subsection \dagger 2, paragraph "f"~~
5 16 ~~"c", subparagraph (3), commits a serious misdemeanor. In lieu~~

5 17 ~~of the sentence provided for under section 903.1, subsection~~
5 18 ~~1, paragraph "b", the offender may be required to attend a~~
5 19 ~~sexual abuser treatment program.~~

5 20 5. a. A school employee who commits sexual exploitation
5 21 in violation of subsection 3, paragraph "a", commits a class
5 22 "D" felony.

5 23 b. A school employee who commits sexual exploitation in
5 24 violation of subsection 3, paragraph "b", commits an
5 25 aggravated misdemeanor.

5 26 Sec. 7. Section 802.2A, subsection 2, Code 2003, is
5 27 amended to read as follows:

5 28 2. An indictment or information for sexual exploitation by
5 29 a counselor, ~~or~~ therapist, ~~or~~ school employee under section
5 30 709.15 committed on or with a person who is under the age of
5 31 eighteen shall be found within ten years after the person upon
5 32 whom the offense is committed attains eighteen years of age.

5 33 An information or indictment for any other sexual exploitation
5 34 shall be found within ten years of the date the victim was
5 35 last treated by the counselor or therapist, ~~or within ten~~
6 1 years of the date the victim was enrolled in the school.

6 2 Sec. 8. Section 903B.1, subsection 4, paragraph h, Code
6 3 2003, is amended to read as follows:

6 4 h. Sexual exploitation ~~by a counselor~~ in violation of
6 5 section 709.15.

6 6 SF 316

6 7 kh/cc/26